THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.11333 of 1998

Dated 13-06-2007

Between:
Food Corporation of India., rep. By its Joint Manager (Operations) APSRTC Complex Buildings, Visakhapatnam.

..... PETITIONER

AND

The Govt. of India Ministry of Labour, Shram Shakthi Bhavan, New Delhi rep. By its Secretary & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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O R D E R:

On a dispute raised by the Food Corporation of India Executive Employees

Union, the Government of India, in exercise of the powers conferred on it under Section 10(1)(d) of the Industrial Disputes Act, referred the following dispute for adjudication by the Industrial Tribunal-cum-Labour Court, Visakhapatnam.

> "Whether the action of the management of Food Corporation of India in not paying synchronization allowance to workers even on the days where there were no ships is justified? If not to what relief the workmen concerned were entitled to?"

A Claim statement was filed by the workmen and a written statement was filed in reply thereto by the petitioner-Management herein. On behalf of the workmen, Exs.W.1 to W.7 were marked as exhibits and on behalf of the petitioner-Management, Exs.M.1 to M.3 were marked as exhibits. No oral evidence was adduced either on behalf of the workmen or on behalf of the Management. The Tribunal framed the following two points for consideration.

1. Whether the management is justified in not paying synchronization allowance to the workers on the days where there were no ships?
2. To what relief are the workmen entitled to?

On point No.1, the Tribunal noted the contention of the workmen that synchronization allowance was paid in lieu of extra duty allowance, which was being paid earlier and that they were entitled to this allowance for extra hours of duty irrespective of availability of a ship in the port for carrying out loading and unloading operations. The Tribunal also noted the contention of the petitioner-Management that the decision to make payment of synchronization allowance was taken on the rationale that the staff were obliged to perform extra duty on arrival of ships etc, apart from sitting tight in office waiting for the vessels on other days and that synchronization allowance was not introduced as a substitute for extra duty allowance. The Tribunal held that synchronization allowance was substituted for the extra duty allowance as specifically prescribed in clause (6)(iv) of the circular under EX.M.1, on which both sides had placed reliance on and that for the period for which synchronization allowance was paid, no other allowance such as over time allowance, extra duty allowance shall be admissible. The Tribunal held that this itself showed that the petitioner-management had agreed to pay synchronization allowance instead of over time allowance or extra duty allowance to the workers to compensate them for the extra hours of work, that clause 6(vi) of the circular specifically provided that synchronization allowance shall not be paid to the staff working in the depots where they were presently working on 8 hour shift basis, that payment of synchronization allowance was meant as compensating only to those workers, of the Food Corporation of India, who were working only for 6½ hours in a day and whose working hours were increased to 8 hrs. and that they were sought to be

compensated for change of timings in their work. The Tribunal also noted the management's contention that payment of synchronization allowance was only for the extra number of hours "***worked***", and that it was intended only for the hours of actual work turned out by the workmen where there was loading and unloading operations of the ships and, therefore, this allowance was payable only where there was a ship on the dock and not on other days where there was no ship. The Tribunal also noted the petitioner's contention that on other days when there was no ship, these workmen had to sit idle though they were on duty for the extra 1½ hrs. a day and, therefore, the management was paying extra duty allowance on those days to the workmen as per the circular under Ex.W.6 dated 02-11-1976. The Tribunal also held that there was nothing in the circular marked under Ex.M.1 to support the contention of the petitioner-management that the number of hours of work referred to in the circular meant the number of hours on duty whether the management provided them with any actual work or not during the duty hours, that clause 6(ii) of the circular provided for non-payment of synchronization allowance when the workmen did not attend duty and were on casual leave. The Tribunal held that, under clause 6(ii) of the circular, the workmen could not claim synchronization allowance when they were absent on any day or were not on duty at the work place for various reasons and as per this clause the workmen were entitled to claim synchronization allowance on every day when they were present at the work place and had attended duty for 8 hrs. along with other departmental workers, whether there was ship or not on the dock and whether loading and unloading operations was carried on in the port or not. The Tribunal held that clause 6(i) of the circular clearly provided for payment of synchronization allowance for the extra number of hours worked on all working days in a month to category III and IV employees working in the depots where departmentalized workers were working and that the said circular was given in pursuance of the agreement between the parties and was intended to compensate workers for their extra hours on duty irrespective of whether or not they were provided with actual work every day and whether or not there was a ship available on any day. The Tribunal did not find anything in the circular to suggest that this benefit was restricted only to those days when there was a ship and not to other days when the workmen were on duty. The Tribunal found no substance in the contention of the petitioner-Management that the synchronization allowance was payable only for the period the ships were handled and till the imported stocks were cleared from the wharf as mentioned in Ex.M.2, that the circular showed that payment of this allowance was linked to synchronization of duty hours of the

departmental workers and not with any other operations of handling the goods from the ships. The Tribunal also noted that the management had got Ex.M.3 marked wherein certain staff were directed to attend general shift duty only from 10.00 a.m. to 5.00 p.m. as there was completion of clearance of cargo from port transit sheds on 12-05-1993, which showed that the management had reduced working hours of the staff working on dock and had accordingly withdrawn payment of allowance under Ex.W.7. The Tribunal noted that the workmen had no grievance for withdrawal of payment of synchronization allowance consequent on de-synchronization of the timings with the local departmental port workers and that it was established that the synchronization allowance was agreed to be paid only on synchronization of timings of the Food Corporation of India workmen with the departmental workers, as a result of which, their working hours i.e., duty hours had increased. The Tribunal rejected the petitioner's contention of limitation and came to the conclusion that the management was not justified in denying payment of synchronization allowance to the workmen covered by the circular under Ex.W.1 on days when there was no ship and, accordingly, passed an award holding that the action of the Management in not paying synchronization allowance to the workers on all the days when there was no ship was not justified and that the workmen were entitled to recover arrears of synchronization allowance filing separate petitions and to deduct the amount, if any, already paid for the relevant period as extra duty allowance.

Sri Meherchand Noori, learned counsel for the petitioner, would place emphasis on the words "***worked***" in clause 6(i) of the circular in Ex.M.1 dated 18-08-1988 to contend that it is only when ships are available for carrying out loading and unloading operations can the workmen be said to have actually worked to claim entitlement of synchronization allowance, and not for the days when, on account of the non-availability of ships, they were not required to discharge the work of loading and unloading operations. Learned counsel would seek to place reliance on the letter addressed by the Food Corporation of India Executive Employees Union to the Assistant Labour Commissioner (Central), Government of India, Port Area, Visakhapatnam dated 10-07-1992 and also on the various terms and conditions stipulated in the circular dated 18-08-1988.

It is necessary to note that the letter addressed by the Food Corporation of India Executive Employees Union to the Assistant Commissioner of Labour, dated 10-07-1992 has not been marked as an exhibit before the Industrial Tribunal and, as such, cannot be examined in certiorari proceedings before this Court, wherein the award of the Industrial Tribunal is under challenge.

The circular dated 18-08-1988 was however, was marked as Ex.M.1. It is, therefore, necessary to take note of the relevant clauses therein.

".....It has now been decided with the approval of the Central Government to synchronize the working hours including lunch hour of the depot staff with the working hours including lunch hour of the departmental workers in the 39 depots (list of 39 depots annexed with this circular) and to pay a Synchronization allowance.

Staff timings including lunch hour timings shall be synchronized with the deport workers' working hours in the 39 departmentalized depots given in the Annexure and the extra working time put in by the staff as a result of the synchronization will be compensated by a Synchronization allowance.

Rates of Synchronization allowance

i. In areas where the Local Shops and Establishments Act is applicable to FCI depots.

The rate of Synchronization allowance in these areas will be 1¼ (one and quarter) times the ordinary hourly wage calculated in accordance with para-3 of Headquarters circular No.EP-17-16/87 dated 03-07-1987.

ii. In areas where FCI depots are exempted from the provisions of the Local Shops and Establishments Act – and where synchronization with departmental workers is necessary.

The Synchronization allowance in the depots in these areas shall be at the following rates:

a. For all category-IV posts	Rs.3/- per half hour or Rs.6/- (Rupees six only) per hour.
b.For Driver Gr.II/AG-III and equivalent posts	Rs.3.50 per half hour or Rs.7/- (Rupees seven only) per hour.
c. For AG-II and equivalent posts.	Rs.4.50 per half hour or Rs.9/- (Rupees Nine only) per hour.
d.For AG-I/Head Electrician equivalent posts.	Rs.5/- per half hour or Rs.10/- (Rupees ten only) per hour.

(iii) Payment of Synchronization allowance as above shall be subject to the following conditions:

i. Synchronization allowance shall be paid for the extra number of hours worked on all the working days in a month, on monthly basis, to the category-III & IV employees working in the depots where departmentalized workers are working;

ii. Such Synchronization allowance shall not be paid to those category-III & IV employees who are on leave including casual leave, tour, training etc., for the period of leave/tour/training, as such employees do not actually put in any extra hours of work in this regard;

iii. Synchronization allowance shall not count for any purpose as in the case of overtime.

iv. For the period (duration of hours of work) for which Synchronization allowance is paid no other allowance such as over time allowance, extra duty allowance shall be admissible;

v. The Synchronization allowance shall be paid to category-III & IV employees of only those depots where departmental workers are working and a list of the same is annexed with this circular.

vi. Synchronization allowance shall not be paid to the staff working in the depots/MRMs where they are presently working on B-Hours shift basis; and

vii. Synchronization allowance shall not be paid to the watch & Wart staff who work on 8-hours shift basis.

These category-III & IV employees, who are members of the All India Trade Union of Food Corporation of India employees and workers of frivendrum and/or who do not wish to attend the depot as per the synchronized timings and who do not wish to avail the benefit of Synchronization allowance and other benefits flowing from the understanding dated 034-01-1987 and Settlement dated 12/14-08-1988 between the management and the N.C.C. may refrain from doing so by submitting a written intimation vide circular NO.2 of 1988 of File No.IR(S)16-7/87 dated 18-08-1988 and their claims will be subject to final decision of the Hon'ble Supreme Court in the matter……"

It is no doubt true that clause 6(i) of the circular provides for payment of synchronization allowance for the extra number of hours worked for all the working days in the month.

Sri Meherchand Noori, learned counsel for the petitioner, would contend that the words ***"worked"*** in clause 6(i) of the circular would necessarily mean the actual work of loading and unloading which could only be carried out when ships were available and not on other days. Learned counsel would submit that the contrary view taken by the Industrial Tribunal is erroneous and necessitated the award being quashed by this Court, in certiorari proceedings under Article 226 of the Constitution of India.

It is necessary to note that the certiorari jurisdiction of this Court, under Article 226 of the Constitution of India, is exercised on limited grounds, mainly, when there is an error apparent on the face of the record. This Court, in exercise of its Certiorari jurisdiction, would not sit in appeal over findings of fact recorded by the Tribunal nor would it re-appreciate the evidence to come to a different conclusion than the one arrived at by the Tribunal. It is not for this Court to substitute its views for that of the Tribunal and, as long as the conclusions drawn by the Industrial Tribunals are based on the evidence on record and is a conclusion which can reasonably be drawn from therefrom, this Court would not interfere, under Article 226 of the Constitution of India, even if it were of the view that the contrary view canvassed before it by the employer was a better view.

Interpreting clause 6(i) of the circular, the Tribunal held that the words ***"worked"*** would only mean that the workman had made himself available for work in contra distinction to clause 6(ii) of the circular where an employee was on leave and did not attend duty. The view taken by the Industrial Tribunal is certainly a view which is based on the evidence record and it cannot be said that such a conclusions are perverse or is based on no evidence. The Tribunal has borne in mind the fact that the employee cannot be faulted if he was present and had made himself available for work despite which no work was provided for.

Since Sri Meherchand Noori, learned counsel for the petitioner, would place reliance on clauses 3 and 4 of the circular dated 18-08-1988, it is necessary to take note of what these clauses provide. No contention with regards the interpretation to be placed on paragraphs 3 and 4 of the circular has been raised before the Tribunal nor did the Tribunal adjudicate on these clauses. Synchronizing of working hours in clause (3) of the circular was to include lunch hour of the depot staff with the working hours including lunch hour of the departmental workers. Learned counsel would submit that the departmental workers, referred to in clause 3, are those working in the depots. It is clear from para 3 that the working hours which were including for synchronizing the working hours of both the depot staff and the departmental staff included their lunch hours. There can be no manner of doubt that the workmen do not actually **"work"** during lunch hours, and if the submission of the petitioner that it is only for the actual period worked is Synchronization allowance payable were tobe accepted then the lunch hour ought not to have been taken into consideration for synchronizing the working hours of the depot staff with those of the departmental staff. As rightly held by the Tribunal, there is nothing in the circular dated 18-08-1988, which limits payment of Synchronization allowance only to the days when ships were available and not on the other days. The award of the Industrial Tribunal does not suffer from any error necessitating interference of this Court, in certiorari proceedings, under Article 226 of the Constitution of India.

The Writ Petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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13-06-2007

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